

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:

Connect America Fund

Rural Broadband Experiments

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WC Docket No. 10-90

WC Docket No. 14-259

**THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA CORPORATION
COMMISSION'S RESPONSE AND COMMENT TO NORTHEAST RURAL SERVICES,
INC. PETITION FOR WAIVER AND REQUEST FOR EXTENSION OF TIME TO FILE
PROOF OF ETC DESIGNATION**

The Public Utility Division of the Oklahoma Corporation Commission ("PUD") hereby requests to provide a response and comments regarding the Petition for Waiver and Request for Extension of Time to File Proof of ETC Designation ("Petition") filed by Northeast Rural Services, Inc. ("NRS") on June 2, 2015. PUD, as detailed below, intends to address what it perceives are misrepresentations of the proceedings initiated by NRS at the Oklahoma Corporation Commission ("OCC") in order to be designated as an Eligible Telecommunications Carrier ("ETC") in conjunction with its provisional selection(s) to receive federal Rural Broadband Experiment support.

Summary

NRS, in support of its Petition, makes multiple statements that appear intended to paint PUD and the OCC as being obstructionist and resistant to NRS' applications requesting ETC designation in specific areas of Oklahoma.¹ NRS goes further to portray the current proceedings before the OCC as a "failure to act" by the OCC and the basis upon which NRS will "likely"

¹ Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500079, Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500081

prepare an ETC application for the Federal Communications Commission ("FCC") to consider in the study areas currently being addressed in two separate proceedings before the OCC.²

PUD disputes these characterizations and would argue that PUD has been the entity working diligently to process these applications in as timely a manner as possible within the confines of the rules applicable to the ETC designation process. PUD would further argue that NRS has a burden to participate in the processing of its own applications and has failed to engage in any self-help efforts to expedite the process. Finally, it is clear that the ultimate delay in the processing of the two ETC applications is entirely of NRS's own making.

Processing of Initial ETC Application

NRS' efforts to file for proper relief and to process its application(s) in an efficient and timely manner have been lacking. NRS originally filed for ETC designation on December 19, 2014 and limited its initial request to specific exchanges within the service area of "Southwestern Bell Telephone d/b/a AT&T" (*see* Cause No. PUD 201400359 filed December 19, 2014). NRS took fifteen (15) days or, alternatively, sixteen percent (16%) of its ninety (90) days within which to provide the FCC evidence of its ETC designation, to file its application. NRS then took an additional forty-two (42) days (forty-six percent (46%) of its ninety day clock) to file an amended application to include service areas served by the rural telephone companies, Chouteau Telephone Company d/b/a FairPoint Communications ("Chouteau") and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink ("CenturyLink"). In filing this amendment, NRS failed to include the entire study area for Chouteau which necessitated a second amendment to its application, filed fourteen (14) days later on February 11, 2015. On top of this, NRS did not file

² NRS also references the proceedings in Cause No. PUD 201400359, *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*. PUD would highlight that this proceeding concluded with Final Order No. 637332 granting NRS ETC designation being issued on March 4, 2015, which allowed NRS to meet its March 5, 2015 deadline with respect to the Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges for which it requested designation.

for a procedural schedule until February 5, 2015, forty-nine (49) days after the filing of its initial application for ETC designation. This means that fifty-four percent (54%) of NRS's ninety (90) day clock had expired before it even requested a procedural schedule. An Order granting the procedural schedule, which, despite the lag described here, included a hearing on the merits on February 27, 2015. This culminated in the Commission issuing Final Order No. 637332 on March 4, 2015. However, NRS, on February 12, 2015, dismissed Chouteau and CenturyLink from its application, therefore, the Final Order granted ETC designation only in the requested Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges.

While NRS seems to imply that the dismissal of Chouteau and CenturyLink was forced upon NRS in order to "move forward with as much of its Rural Broadband Experiments project as possible," the reality is that ETC designation in rural telephone company study areas carries the requirement for a public interest finding, which necessitates a more detailed review of such applications. In addition, such designation, without re-definition, must be for the entire study area. Further, in addition to the obligations of the Oklahoma Corporation Commission in considering such applications, all impacted parties have the right to participate. By waiting to identify the rural telephone company areas to be included in the request for ETC designation until forty-two (42) days after the filing of its application (and fifty-seven (57) days from the Notice of provisional selection), NRS itself significantly compressed the schedule for a detailed consideration of its complete request.

Additionally, NRS failed to engage in procedural self-help to expedite this process. Other similarly situated carriers have simultaneously filed complete ETC applications along with a Motion for Protective Order, Motion for Procedural Schedule and Direct Testimony. Filing all of these at the same time is the best way to move the process along. In this case, had NRS taken

this kind of step, it is likely a procedural schedule order could have been issued in approximately twenty-eight (28) days, rather than the sixty-three (63) days it took under NRS' approach.

NRS, even more so than PUD, has the responsibility to expedite the processing of its application. It is disingenuous, at best, to imply that PUD was not willing to expedite the processing of the NRS application when the facts show that the fault for delay lies squarely with NRS.

Processing of Subsequent ETC Applications

As indicated by NRS, the dismissal of Chouteau and CenturyLink from Cause No. PUD 201400359 caused NRS to file new applications seeking ETC designations in the Chouteau and CenturyLink study areas. NRS characterizes the re-filing to have been done "promptly" with filings on February 20, 2015,³ eight (8) days after NRS knew it would need to re-file if it wanted to continue to seek ETC designation in these areas.

In its Petition, NRS, at page three, states,

Despite NRS's good faith efforts, the OCC has not scheduled a date to rule on the Chouteau Application or the CenturyTel application, the OCC has not yet issued a procedural order outlining the dates when such a ruling can be expected; the recommendation for a final hearing was June 25 for the CenturyTel Application and July 2 for the Chouteau Application.

Once again, such a portrayal of the OCC as failing or resisting the establishment of a procedural schedule is erroneous and misleading. In examining NRS's "good faith efforts" it should be noted that, first, NRS waited twenty-one (21) days, until March 12, 2015 to file for a procedural schedule and then did not even offer proposed dates until March 25, 2015, fourteen (14) days later, which was the day before the hearing on the procedural schedule motion. This

³ Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500079, Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 201500081

had the effect of giving the parties approximately three (3) business hours to consider the proposed dates which, not unexpectedly, resulted in a continuance of the hearing for another week to April 2, 2015. Here again NRS did not fully prosecute its case or even take the steps available to expedite the process.

While an Order was not issued for a procedural schedule on April 2, 2015, the parties did agree to dates which were as expeditious as possible, establishing, in both cases, a time frame of seventy-six (76) days from NRS filing direct testimony to the date of the Hearing on the Merits. PUD believes this to be an expedited schedule for an ETC application involving rural telephone company study areas and the requisite public interest test.

In establishing these dates, it was made clear among the parties that, in order to support the expedited schedule, responses to discovery must be quick, to include all parties agreeing to a five (5) business day response time to discovery questions. Staff issued its Data Request No. 1 on April 17, 2015. On April 23, 2015, instead of providing responses to the discovery, NRS filed Objections to seven (7) of the ten (10) questions contained in Staff DR No. 1. This necessitated a hearing on the objections on April 30, 2015 at which time NRS agreed to withdraw its objections.⁴ Here again, efforts to move along expeditiously are quashed by NRS itself.

Finally, and most significantly, on May 7, 2015, Ms. Kimberly Prigmore, Deputy General Counsel for PUD, received an email request from NRS's counsel, Mr. Michael Torrone, asking for Staff's agreement to halt efforts to process both of these cases. Ms. Prigmore responded via email and indicated that PUD was halting efforts with regard to Cause No. PUD 201500079 and Cause No. PUD 201500081. This included the cancellation of the scheduled meeting at which PUD Staff was to review NRS's confidential responses to the data requests. It is

⁴ To date, NRS has not filed to withdraw its objections as it indicated it would.

incomprehensible as to why NRS would complain that the OCC failed to issue an order establishing procedural schedule in these cases *when the lack of such an order is in direct response to NRS's own request to halt processing.*

NRS goes on to complain that these procedural dates have been further called into question due to PUD, on May 21, 2015, filing a Motion to Suspend these causes. In addition to not receiving any status updates as NRS had indicated would be provided, PUD filed these motions because NRS would not provide notice (formal or informal) to the parties that, due to the request by NRS to halt processing of the cases, new procedural dates would be necessary if and when NRS determined that it was ready to move forward with the cases. These Motions did not involve anything new, they were simply attempting to ensure that the record correctly reflected the current status of the cases.

Discussion

PUD is well aware of the FCC's goals with regard to the Rural Broadband Experiments and the desire for ETC designations to be processed within a ninety (90) day period. Further, PUD and the OCC have demonstrated their commitment to timely designate qualified entities as ETCs for purposes of the Rural Broadband Experiment as it has granted ETC designation in response to four (4) applications, to include NRS itself, seeking such designation in conjunction with being provisionally granted Rural Broadband Experiment funding.⁵

Based on the facts described above, PUD strongly disputes NRS's claim that,

⁵ Cause No. PUD 201400064 *Application of RBSC Oklahoma, LLC. For Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Final Order 637329, dated February 4, 2015; Cause No. PUD 201500082 *Application of Lake Region Technology & Communications LLC, for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e)*, Final Order 641086, dated May 26, 2015; Cause No. PUD 201500077 *Application of Wichita Online, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Final Order 641804, dated June 11, 2015; as well as Cause No. PUD 201400359 *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Final Order 637332, dated March 4, 2015.

NRS diligently pursued its ETC designation. It is through no fault of NRS that it is unable to provide the required confirmation of ETC designation; NRS has worked tirelessly to attempt to move these dockets along, but is meeting significant resistance from the PUD and Chouteau Telephone Company.

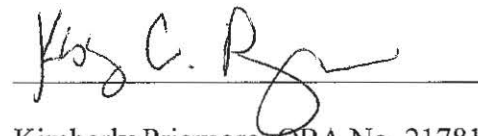
It is PUD's view that the delays complained of by NRS are the result of lack of timeliness by NRS in processing its own cases, lack of familiarity with the requirements for ETC designation, and, most importantly, its own request to stop processing these two current cases, not a fabricated lack of action or obstructionism by PUD, the OCC or other parties.

Conclusion

PUD does not support or oppose the actual grant of a waiver to NRS but would simply request that the FCC not accept the portrayal of PUD, the OCC or other parties as impeding NRS's efforts in any way. Further, to the extent a waiver is granted and NRS desires to continue, PUD stands ready to develop a reasonable schedule within which to process the pending requests for ETC designation. However, as the Applicant, NRS will continue to bear the responsibility to prosecute its own cases and will directly impact how quickly a case can be processed.

Respectfully submitted,

Public Utility Division
Oklahoma Corporation Commission

A handwritten signature in dark ink, appearing to read "Kim C. Prigmore", is written over a horizontal line.

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